a deterrent sentence. With respect, I would agree. But in this case, it seems to me that in safeguarding the public interest, the learned president had, with all respect, not sufficiently considered the full meaning of that passage from Hilbery J. in *R* v. *Ball*[1] which he quoted and is now reproduced:

"In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. *The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living.* Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe."

and in particular the sentence therein which I have emphasized, and applied it to the appellant. A particular criminal may be so induced only by a deterrent sentence of a long term of imprisonment. Another may well profit by being given a second chance. As the Court of Appeal had said in *Ho Kim Luan and Anor.* v. *Public Prosecutor*,[2] at page 162:

"Each case, of necessity, must depend upon its own facts and upon the character and antecedents of the offender."

It is by reason of the character and antecedents of the offender and in the particular circumstances of this case that I propose to allow this appeal, as I feel from reading the probation report and after hearing his counsel and receiving an assurance from his parents, that the appellant will in all probability turn over a new leaf. The sentence is set aside and the appellant will be put on a bond under section 294 of the Criminal Procedure Code (Cap. 6) for 3 years in the sum of $1,000 in one surety.

Appeal allowed.

Solicitors: *Arulanandom & Co.*

ATTORNEY-GENERAL, MALAYSIA v. CHEMICAL WORKERS' UNION OF MALAYA & ANOR.

[O.C.J. (Abdul Aziz J.) September 11, 1970]

[Kuala Lumpur — Originating Motion No. 21 of 1969]

Industrial Law — Industrial relations — Dispute as to recognition of trade union referred to Industrial Court — Earlier ruling by Registrar of Trade Unions allowing workers engaged in the animal feed industry to join a chemical workers union — Whether Industrial Court has jurisdiction to hear dispute — Certiorari — Prohibition — Industrial Relations Act, 1967, s. 8 — Trade Unions Ordinance, 1959, ss. 9, 11, 26 and 27.

The first respondent, the Chemical Workers' Union of Malaya, had written to the Registrar of Trade Unions asking whether they could enrol as their members workers engaged in the animal feed industry and employed by the second respondent company, the Malayan Pharmaceutical Factory Bhd. The registrar after corresponding with the company, ruled that the company's industries were similar to those enumerated in the rules of the first respondent union as giving eligibility for membership and allowed the workers engaged in the animal feed industry to join the union. The company refused to accord recognition to the union and the union thereupon referred the dispute to the Minister who in turn referred the matter to the Industrial Court. The Industrial Court heard the matter and allowed the company an adjournment to enable it to call evidence to show that their products were not similar to those specified in the rules of the union. The Attorney-General applied for an order of *certiorari* to quash the decision of the Industrial Court in the matter and for a further order of prohibition to stay further proceedings in the dispute over the non-recognition of the claim by the company. It was argued (a) that the Industrial Court had no jurisdiction to adjudicate on the dispute although it was referred to it by the Minister or alternatively it had acted in excess of its authority in adjudicating on a matter which is in the executive discretion of the Registrar of Trade Unions; (b) that the Industrial Court had no right to question the decision of the registrar on the question of the similarity or eligibility of the employees of the company to be members of the union and (c) that its decision to allow the company to call evidence was wrong and *ultra vires* its jurisdiction.

Held, dismissing the motion: (1) as soon as the dispute over the non-recognition of the union by the company was referred by the Minister under section 8(4) of the Industrial Relations Act, 1967 to the Industrial Court, the latter is seised with power under section 27 to hear the dispute and make its award relating to all or any of the issues in dispute;

(2) the Industrial Court had not acted in excess of its jurisdiction when it ordered the hearing of the dispute to proceed and allowed the company opportunity to be heard and a chance to call their witnesses, as under section 26 of the Act the court is empowered to take evidence from the parties and their witnesses;

(3) the power of the Registrar of Trade Unions, to declare similarity of trade, occupation or industry is for the purpose of registering a trade union or of approving a federation or application of trade unions but does not extend to a dispute on the question of recognition of workmen under the Industrial Relations Act, nor could it override the powers and jurisdiction of the Industrial Court under the Act.

Case referred to:-

(1) *Kesatuan Perkerja Kenderaan Sri Jaya* v. *Industrial Court & Ors.* [1970] 1 M.L.J. 79.

ORIGINATING MOTION.

Madam L. T. Chua (Federal Counsel) for applicant.

G. Vadiveloo for the 1st respondent.

L. S. Tan for the second respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is a motion by the applicant for an order of *certiorari* to remove into this court for the purpose of being quashed the decision made by the Industrial Court on July 6, 1969 and for a further order of prohibition to stay further proceedings in the dispute over the non-recognition of the union by the company.

The first respondent is a trade union which by rule 3 of its constitution expressly limits its membership to a certain class or category of workers, the relevant parts of which read: —

"Membership of the union shall be open to all workers ... who are employed by companies manufacturing chemical and pharmaceutical products such as industrial chemicals, including

fertilisers, acids and plastics; paints, varnishes, varnish stains and shellac, lacquers and enamels; toiletry products such as face and hair creams; and industrial, medical and chemical gases . . .".

The second respondent is a company which employed workers in the manufacture of animal feed and pharmaceutical products. On the evidence it appears that the officers of the union though anxious to have more members were doubtful whether the workers of the company engaged in the manufacture of animal feed or food could join their union. It is obvious that they must have realised that by no stretch of imagination could animal feed or food be classified as chemicals as enumerated in their rule 3. Hence they wrote to the Registrar of Trade Unions for information whether they could enrol as their members workers engaged in the animal food industry. Their letter to the registrar dated October 30, 1968 reads: —

"The Company manufactures Pharmaceutical Products and Animal Food, and has about 150 workers, 50% of whom work in the Animal Food Section.

Kindly let us know if they are allowed to join our Union."

The registrar on November 4, 1968 wrote to the company asking them to clarify their business activities. When no reply was received, he wrote to them again threatening them that: —

"if I do not hear from you by the 5th of December 1968, it will be presumed that your Company is engaged in an industry similar to the industries specified in the membership clause of the abovementioned Union, and it will be permitted to enrol as members the workmen employed in your Company."

His intention to make such a presumption under such circumstances if carried out is to say the least highly improper and illegal as the discretion vested in him could not be said to have been properly exercised by him.

The company's reply of the December 4, 1968 pointed out to him that their business consisted of two distinct industries namely the manufacture of animal feed and the manufacture of pharmaceutical products. Inspite of this information the registrar classified the company's industries "similar" to those enumerated in rule 3 of the union and allowed the workers engaged in the animal feed industry to join the union.

The company naturally refused to accord recognition of the union and the union under section 8(3) of the Industrial Relations Act, 1967 reported the dispute to the Minister who, in turn, referred the dispute to the Industrial Court presumably after he had himself failed to resolve the dispute.

It must be pointed out here that the dispute over the non-recognition of the union arose prior to October 9, 1969 and the law immediately prior to that date would therefore prevail and the relevant parts of section 8 of the Industrial Relations Act, 1967 read as follows: —

"8.(1) A trade union of workmen may serve on an employer . . . a claim for recognition in respect of the workmen or any class of workmen employed by such employer . . .

(2) An employer . . . upon whom a claim for recognition has been served shall, within thirty days after the service of such claim, either accord recognition or if recognition is not accorded, notify the trade union of workmen concerned in writing the grounds therefor.

(3) Upon receipt of a notification under sub-section (2) or where an employer . . . has failed to comply with the provisions of sub-section (2), the trade union of workmen may report the matter in writing to the Minister.

(4) The Minister upon receipt of a report under sub-section (3) may take such steps as may be necessary or expedient to resolve the matter and shall, if the matter is not resolved, refer such matter to the court for decision." (court here means the Industrial Court).

From the above it will be seen that the Minister on receipt of the report from the union is legally bound to refer the dispute to the Industrial Court if he fails to resolve the dispute.

The Industrial Court on receipt of the reference from the Minister commenced hearing of the dispute on July 6, 1969 as it was legally obliged to do and to give its decision under sections 9 and 27 of the Industrial Relations Act, 1967.

After hearing the evidence of the Assistant Registrar of Trade Unions the Industrial Court ordered, *inter alia*, that the hearing of the dispute should proceed and that the burden of proof lies on the company to prove that their products are not similar to those specified in rule 3 of the union's constitution. To enable the company to call any evidence that they might require an adjournment of the hearing was allowed to them.

The applicant now contends that the Industrial Court has no jurisdiction to adjudicate on this dispute although it was referred to them by the Minister under section 8(4) of the Industrial Relations Act, 1967, or, alternatively, it had acted in excess of its authority "in adjudicating on a matter which is the executive discretion of the Registrar of Trade Unions as provided by section 2(2) of the Trade Unions Ordinance, 1959"; and that it has no right to question the decision of the Registrar of Trade Unions on the question of similarity or eligibility of the employees of the company to be members of the union under section 2(2) of the Trade Unions Ordinance, 1959; and lastly that its decision to allow the company to call evidence was wrong and *ultra vires* its jurisdiction.

It is perhaps not generally realised that the Industrial Relations Act, 1967 has conferred upon the Industrial Court extensive powers and jurisdiction over disputes between a trade union and employers and between unions and unions over-riding in part that portion of the Trade Unions Ordinance, 1959 relating to industrial disputes. Sections 9, 11, 26 and 27, the relevant parts of the Act read as follows: —

"9.(1) The court may, in deciding whether or not a trade union of workmen shall be accorded recognition, prescribe its extent and scope or the conditions upon which such recognition shall be accorded . . .

(2) The court shall have power to join as parties to any proceedings all trade unions which claim recognition in respect of the same workmen or class of workmen employed by an employer.

11. Where the court has decided that a trade union of workmen shall not be accorded recognition, such trade union shall not make any further claim for recognition until three months have elapsed after the decision.

26. The court may, in relation to any trade dispute before it —

(a) order that any party be joined, substituted or struck off;

(b) summon before it the parties to the trade dispute and any other person who in his opinion is connected with the proceedings;

(c) take evidence on oath or affirmation, and compel the production before it of books, papers, documents and things;

(f) after consultation with the Minister, call in the aid of one or more experts; and

(g) generally direct and do all such things as are necessary or expedient for the expeditious determination of the trade dispute.

27.(1) The court shall have power in relation to a trade dispute referred to it, to make an award (including an interim award) relating to all or any of the issues in dispute.

(5) The court shall act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form.

(6) In making the award, the court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute."

In commenting on the said sections 8. 9 and 27, Suffian F.J. in *Kesatuan Pekerja2 Kenderaan Sri Jaya* v. *Industrial Court and Others*[1] said: —

"The question for decision in this appeal is whether the Industrial Court ... has jurisdiction to decide on matters referred to it by the Minister of Labour where the matter involves a claim for recognition made by a trade union within two years of recognition having been accorded to a rival union. The answer to the question depends on the construction of the Industrial Relations Act No. 35 of 1967 in particular its Part III reproduced elsewhere here ... where an employer grants recognition in accordance with a claim made under the section, no dispute arises ... where, however an employer fails to accord recognition, the matter may be reported to the Minister and if the Minister is unable to resolve the matter, he shall refer it to the Industrial Court for a decision ... Before us the regularity of the Minister's act is not impugned and under section 114 of the Evidence Ordinance this court may presume and does presume that the Minister's official act has been regularly performed. When the matter has been referred to the Industrial Court by the Minister in the proper exercise of his power, what is the Industrial Court to do? Can it decline to act? I do not think so. The scheme of the Act read as a whole is that once a dispute of this nature has been referred by the Minister to the Industrial Court, the court is at once invested with the jurisdiction and is obliged to decide one way or another. That this is so is clear from section 27 and section 9."

In the instant case I have carefully considered the applicant's objections and have come to the following conclusions.

On the question of jurisdiction, I hold that as soon as the dispute over the non-recognition of the union by the company was referred by the Minister under section 8(4) of the Industrial Relations Act, 1967, to the Industrial Court, the latter is seised with power under section 27(1) to hear the dispute and to make its award relating to all or any of the issues in dispute. I also hold that it had not acted in excess of its jurisdiction when it ordered the hearing of the dispute to proceed and allowed the company an opportunity to be heard and a chance to call their witnesses, expert or otherwise. Under section 26 of the said Act, the Industrial Court is empowered to take evidence from the parties and their witnesses and after consulting the Minister can call in the aid of one or more experts even if the parties chose to call none.

The question whether the decision of the Registrar of Trade Unions made by him under section 2(2) of the Trade Unions Ordinance, 1959 can or cannot be questioned by an Industrial Court is best answered by an examination of the section itself which reads: —

"2.(2) For the *purposes* of the definition of 'trade union' in sub-section (1), and for the *purposes* of sections 72 and 74, 'similar' means in the opinion of the Registrar."

Sub-section (1) deals with definitions including the definition of a "trade union", section 72 deals with the formation or amalgamation of two or more trade unions into one federation of trade unions and section 74 deals with the affiliation of a trade union with the federation of trade unions. It is the duty of the Registrar of Trade Unions to register a trade union of workers employed in similar trade, occupation or industry, to approve the federation of two or more trade unions, or the affiliation of a trade union with the federation of trade unions, of similar trade, occupation or industry For these and these purposes only could the registrar validly exercise his powers to declare similarity of trade, occupation or industry.

His powers to declare similarity of trade, occupation or industry for the purposes of registering a trade union or of approving a federation or affiliation of trade unions does not extend to disputes on the question of recognition of workmen under the Industrial Relations Act, 1967 nor could it over-ride the powers and jurisdiction conferred upon the Industrial Court by sections 9(1) and 11, and in particular section 27(1) and (5) by which the Industrial Court "shall act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form."

Without expressing any opinion as to what will ultimately result on the hearing of the union's claim against the company in this instant case before the Industrial Court, it seems to me that once a trade union is registered it is bound by the rules of its constitution. It can only represent that category or class of workmen as is specified in its rules. If a trade union desires to extend its membership clause to include workmen engaged in other categories of work or industry, it should first amend its rules. In this instant case the Chemical Workers' Union of Malaya has failed to do so. I hold that not only the Industrial Court has a right but it is under a duty to question the registrar's doubtful decision to extend the union's membership clause without amendment to its rule 3.

The applicant's motion is accordingly dismissed with costs.

Motion dismissed.

Solicitors: *D. P. Xavier & Co.; L. S. Tan & Co.*